

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Byron Kenneth Anderson,

Civil No. 13-3152 (DWF/LIB)

Petitioner,

v.

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

Mark Dayton, as Governor of the State of Minnesota; Lucinda Jesson, as Commissioner of the Department of Human Services; and The State of Minnesota,

Respondents.

This matter is before the Court upon *pro se* Petitioner Byron Kenneth Anderson's ("Petitioner") objections (Doc. No. 5) to Magistrate Judge Leo I. Brisbois's December 6, 2013 Report and Recommendation (Doc. No. 4) insofar as it recommends that:

(1) Petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 be denied; and (2) this action be summarily dismissed without prejudice for lack of jurisdiction. Respondents filed a responsive memorandum to Petitioner's objections on January 10, 2014. (Doc. No. 10.) Petitioner submitted a reply thereafter. (Doc. No. 14.)

The Court has conducted a *de novo* review of the record, including a review of the arguments and submissions of the parties, pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 72.2(b). The factual background for the above-entitled matter is clearly and precisely set forth in the Report and Recommendation and is incorporated by reference for purposes of Petitioner's objections. Having carefully reviewed the record, the Court

concludes that Petitioner's objections offer no basis for departure from the Report and Recommendation.

Petitioner appears to generally object to the Magistrate Judge's determination that the petition for habeas relief filed in this action is a second or successive petition, requiring pre-authorization from the Eighth Circuit under 28 U.S.C. § 2244(b)(3)(A). (*See generally* Doc. No. 5.) The undersigned agrees with the Magistrate Judge's determination and finds that dismissal of this matter without prejudice will provide Petitioner with the opportunity to seek appropriate authorization from the Eighth Circuit to file a successive habeas petition and assert any appropriate claims. The Court thus concludes, as did Magistrate Judge Brisbois, that Petitioner is not entitled to habeas relief at this time. Consequently, the Court denies the petition and dismisses this matter without prejudice.

Based upon the *de novo* review of the record and all of the arguments and submissions of the parties, and the Court being otherwise duly advised in the premises, the Court hereby enters the following:

ORDER

1. Petitioner Byron Kenneth Anderson's objections (Doc. No. [5]) to Magistrate Judge Leo I. Brisbois's December 6, 2013 Report and Recommendation are **OVERRULED**.
2. Magistrate Judge Leo I. Brisbois's December 6, 2013 Report and Recommendation (Doc. No. [4]) is **ADOPTED**.

3. Petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C.

§ 2254 (Doc. No. [1]) is **DENIED**.

4. This action is summarily **DISMISSED WITHOUT PREJUDICE** for lack of jurisdiction.

5. Petitioner's application for leave to proceed *in forma pauperis* (Doc. No. [2]) is **DENIED AS MOOT**.

6. Petitioner's motion for appointment of counsel (Doc. No. [3]) is **DENIED AS MOOT**.

7. Petitioner is **NOT** granted a Certificate of Appealability.

8. Petitioner's Motion for Extension of Time (Doc. No. [7]) is **DENIED AS MOOT**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: March 31, 2014

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge